



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0426; FRL-9999-11-Region 6]

Air Plan Approval; Arkansas; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the Governor of Arkansas through the Arkansas Department of Environmental Quality (ADEQ) on June 2, 2015. The SIP submittal addresses requirements of the federal regulations that direct the State to submit a periodic report assessing progress toward reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the existing implementation plan.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0426. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically through <https://www.regulations.gov> or in hard copy at EPA Region 6 Office, 1201 Elm Street, Dallas, TX 75270.

FOR FURTHER INFORMATION CONTACT: James E. Grady, EPA Region 6 Office, Regional Haze and SO₂ Section, 1201 Elm Street, Suite 500, Dallas TX 75270, 214-665-6745; grady.james@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Grady or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” each mean “the EPA.”

I. Background

Each state is required to submit to the EPA an implementation plan addressing regional haze visibility impairment for the first implementation period under 40 CFR 51.308. Under 40 CFR 51.308(g),¹ each state is then required to submit a progress report that evaluates visibility progress toward the RPGs for each Class I area within the state² and each Class I area outside the state³ which may be affected by emissions from within the state. In addition, 40 CFR 51.308(h) requires states to submit, at the same time as the progress report, a determination of adequacy of

¹ To address the progress report requirements under 40 CFR 51.308(g), the State provided: (1) a description of the status of measures in the approved regional haze implementation plan; (2) a summary of emission reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state (and for two Class I areas in Missouri); (4) an analysis tracking the changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in reducing pollutant emissions and improving visibility; (6) an assessment of whether the approved regional haze SIP elements and strategies are sufficient to enable the State (and other states with Class I areas affected by emissions from the state) to meet all established RPGs; and (7) a review of the State’s visibility monitoring strategy.

² Arkansas has two Class I areas within its borders that are addressed in the progress report: Upper Buffalo and Caney Creek Wilderness areas. Upper Buffalo Wilderness area, located in Newton County, Arkansas, is an oak-hickory forest with intermittent portions of shortleaf pine located in the Ozark National Forest and offers 12,108 acres of boulder strewn and rugged scenery along the Buffalo River. Caney Creek Wilderness is located in Polk County, Arkansas, and covers 14,460 acres on the southern edge of the Ouachita National Forest and protects a rugged portion of the Ouachita Mountains.

³ Two Class I areas outside Arkansas’ borders at Hercules Glades and Mingo Wilderness areas in Missouri were found to be impacted by emissions from within Arkansas.

the existing regional haze implementation plan.⁴ The progress report for the first planning period is due five years after submittal of the initial regional haze SIP and must take the form of a SIP revision. Arkansas submitted its regional haze SIP for the first implementation period on September 9, 2008,⁵ and the EPA partially approved and partially disapproved portions of it on March 12, 2012.⁶ On June 2, 2015, Arkansas submitted its progress report regarding the initial 2008 regional haze SIP to the EPA in the form of a SIP revision under 40 CFR 51.308. The EPA promulgated a FIP (the Arkansas Regional Haze FIP) on September 27, 2016 to address the disapproved portions of the 2008 Arkansas Regional Haze SIP and then approved successive SIP revisions (the 2017 Arkansas Regional Haze NO_x SIP revision and the 2018 Arkansas Regional Haze SO₂ and PM SIP revision)⁷ that replaced a portion of those FIP elements.⁸

On March 28, 2019, we published a notice of proposed rulemaking (NPRM) proposing to approve Arkansas' regional haze five-year progress report SIP, submitted by ADEQ on June 2, 2015.⁹ In that document we proposed to approve Arkansas' regional haze progress report SIP since it meets the applicable regional haze requirements set forth in 40 CFR 51.308(g) and meeting the determination of adequacy provision under 40 CFR 51.308(h) for the first

⁴ The Regional Haze Rule requires states to provide in the progress report an assessment of whether the current "implementation plan" is sufficient to enable the states to meet all established RPGs under 40 CFR 51.308(g). The term "implementation plan" is defined for purposes of the Regional Haze Rule to mean any SIP, FIP, or Tribal Implementation Plan. As such, the Agency may consider measures in any issued FIP as well as those in a state's regional haze plan in assessing the adequacy of the "existing implementation plan" under 40 CFR 51.308(g) and (h).

⁵ In addition to the initial September 2008 submittal, the State submitted a SIP revision on August 3, 2010, with mostly non-substantive changes that addressed Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19 Chapter 15. On September 27, 2011, the State submitted supplemental information to address the regional haze requirements. The EPA collectively refers to the original 2008 submittal and these revisions together as the 2008 Arkansas Regional Haze SIP.

⁶ See the final action on March 12, 2012 (77 FR 14604).

⁷ See final action approving the Arkansas Regional Haze NO_x SIP revision on February 12, 2018 (83 FR 5927). The EPA's final action approving the Arkansas Regional Haze SO₂ and PM SIP revision was signed by the Regional Administrator on August 28, 2019 and has yet to be published.

⁸ The remaining part of the FIP which addresses the BART and associated long-term strategy requirements for Domtar will be addressed in a future SIP action.

⁹ See 84 FR 11697.

implementation period. We also proposed to find that the State of Arkansas fulfilled its requirement in 40 CFR 51.308(i) regarding state coordination with Federal Land Managers (FLMs). The published proposal provides a detailed description of Arkansas' progress report SIP submittal and the rationale for our proposed approval of it.

The public comment period for the proposal closed on April 29, 2019. We received two public comments concerning our proposed action. The comments are included in the publicly posted docket associated with this action at <https://www.regulations.gov>. We received an anonymous comment regarding the Mercury and Air Toxics Standards which is outside the scope of this action. We also received a comment letter dated April 29, 2019, from the Arkansas Affordable Energy Coalition (AAEC) regarding our proposal. The AAEC expressed general support for the proposed approval but also submitted a copy of the comments it previously submitted on December 31, 2018 on our proposed approval action on the August 8, 2018 Arkansas Regional Haze SO₂ and PM SIP revision (located in Docket No. EPA-R06-OAR-2015-0189). We have responded to those submitted comments as part of our final action on that SIP revision.¹⁰ Our detailed responses can be found in the response-to-comment (RTC) documents for the Arkansas Regional Haze SO₂ and PM SIP Revision.¹¹ After careful consideration, we have determined that the comments received do not raise any issues specific to the progress report. We are approving the Arkansas regional haze progress report SIP submittal, as proposed.

II. Final Action

We are approving Arkansas' regional haze progress report SIP revision (submitted on June 2, 2015) since we have found that it meets the applicable regional haze requirements set

¹⁰ The EPA's final action approving the Arkansas Regional Haze SO₂ and PM SIP revision was signed by the Regional Administrator on August 28, 2019.

¹¹ See "Arkansas Regional Haze Phase II SIP Revision Response to Comments," in Docket ID EPA-R06-OAR-2015-0189.

forth in 40 CFR 51.308(g) and the determination of adequacy provision under 40 CFR 51.308(h). We also find that the State of Arkansas fulfilled its requirement in 40 CFR 51.308(i) regarding state coordination with Federal Land Managers (FLMs). This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves a state's determination that their current regional haze plan is meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best Available Retrofit Technology, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Regional haze, Sulfur dioxide, Visibility, Volatile organic compounds.

Dated: September 23, 2019.

Kenley McQueen,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

2. In §52.170 paragraph (e), the third table titled “EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP” is amended by adding a new entry “Arkansas SIP Review for the Five-Year Regional Haze Progress Report” at the end of the table to read as follows:

§52.170 Identification of plan.

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(e) * * *

**EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE
Arkansas SIP**

Name of SIP Provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
* * *	* * *	* * *		
Arkansas SIP Review for the Five-Year Regional Haze Progress Report	Statewide	June 2, 2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

[FR Doc. 2019-20982 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]